

Antitrust

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Google in Tech Rivals' Sights for Suits After DOJ Antitrust Win

By Katie Arcieri

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- Cases are likely to be filed by Google's rivals, customers
 - Antitrust cases will evaluate how consumers are harmed

Alphabet Inc.'s Google is ripe for more private antitrust litigation after the Justice Department's victory in a search monopolization suit against the tech company and a similar case brought by Yelp Inc. this week.

Yelp, the online review site, filed a complaint Aug. 28 in the US District Court for the Northern District of California, alleging Google has monopoly power in the local search advertising market. The case follows an Aug. 5 ruling, where Judge Amit P. Mehta found that Google had monopoly power in the product markets for general search services and general search text ads.

Mehta's ruling sets the stage for more antitrust complaints against the search giant from private litigants, including competitors and consumers, while further placing Google on the defense, even if those cases have different allegations and standards of proof.

"The court issued a detailed finding that Google did have monopoly power, and rivals are going to try to piggyback on that finding," said Michael Carrier, a professor at Rutgers Law School who teaches antitrust.

Some companies might wait until Mehta's ruling is handled on appeal, which would yield firmer precedent. Others, like Yelp did, may decide now is the right time to sue.

The appeals process is sure to play out slowly, said Peter Mucchetti, partner with Clifford Chance in Washington and a former DOJ attorney. But if Mehta's ruling is upheld, it would be a "tremendous leg up" for plaintiffs, he said.

"I would not be surprised if more companies file lawsuits against Google," Mucchetti said.

The CEOs of Google competitors DuckDuckGo and Microsoft testified at the DOJ trial against Google in 2023. DuckDuckGo declined to comment on any potential litigation against Google. Microsoft didn't return inquiries for comment.

A Google spokesperson said the company will vigorously defend itself against Yelp's "meritless claims."

Customers, Too

In addition to rivals, customers who buy search advertising from Google may also sue, said George Hay, a professor of law and economics at Cornell Law School who served as director of economics at the Justice Department.

"Lawyers will want to drive these cases; you have an army of lawyers reading that Google is a monopoly," Hay said.

"There's going to be a lot of cases filed I think; some of them may have legs, some will not."

If a plaintiff has a claim for damages based on the theory of liability that Mehta's ruling addressed, that confers an advantage in terms of getting over a motion to dismiss—and a plaintiff would likely be able to get to a jury, said Bill Baer, head of DOJ's antitrust division during the Obama administration who is now a Brookings Institution fellow.

"The injured parties here are most likely to be advertisers who had to pay more than they would have in a competitive market," he said.

Uphill Battle

Yelp's suit differs in some crucial ways from the DOJ's case that found Google to be a monopoly in "general search," antitrust scholars say. Yelp's concerns are more concentrated in the "local search advertising" market.

Yelp, which sells local search advertising, claims Google "self-preferenced" its own products in search results and harmed the ability of local search providers to compete for users and revenue.

“This Yelp case is about Google incorporating reviews into its own search page,” said Erik Hovenkamp, antitrust professor also at Cornell Law School. “Yelp is upset about this because this means that people who use Google are just going to” read the reviews in Google’s search results without visiting Yelp, he said.

The actual holdings in the DOJ case, however, aren’t directly related to the kinds of allegations being made by Yelp, said Rebecca Haw Allensworth, a Vanderbilt University law professor who focuses on antitrust.

“Mehta found Google’s a monopolist in general search and general search advertising, not this local search advertising, which is a new thing,” Allensworth said. “There’s going to be a fight over whether that’s an antitrust market.”

Ultimately, Yelp will have to prove that consumers were harmed by Google’s alleged misconduct in local search, said Rutgers’ Carrier.

Maybe it’s easier and better for consumers to have Google instantly refer them to its own search products, as opposed to having users click through various websites for alternate options, he said.

Yelp will have a burden in proving its monopolization claims, Baer added. “It cannot simply rely on what the government has said in the general search case,” he said.

Yelp is represented by Hausfeld LLP.

The case is Yelp v. Google, N.D. Cal., No. 5:24-cv-06101, 8/28/24.

—With assistance from Emily Birnbaum (Bloomberg News).

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